IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.36 OF 2005

The Union of India and another. ... Petitioners.

vs.

M/s.Gandhi Industrial Corporation. .... Respondent.

Mr.A.C.Singh with Ms.S.I.Shah, for Petitioners.

Mr.T.S.Pandian i/b. M/s.Thakordas & Madgavkar, for Respondent
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CORAM: D.K.DESHMUKH,J.

DATED: 13th March,, 2006

P.C.:-

1. By this petition, the petitioners challenge only that part of the Award by which against claim no.3 the learned Arbitrator has directed the petitioners to pay certain amount to the respondent. The facts that are relevant and material for deciding this petition are that the respondent M/s.Gandhi Industrial Corporation, Umbergaon, Thane, were doing work of gumming and super-calendering of the stamp base paper for the petitioners for several years. Till 1993-94 the stamp base papers which the petitioners were supplying for the purpose of the said work, were exempted from the excise duty.

However, subsequently that exemption was withdrawn from the year 1994-95. The respondent on withdrawal of the exemption, got itself registered under the relevant Central Excise Rules as a small scale industrial unit. The stamp base papers were procured by the petitioners from the Paper mills as it being a security item and it was supplied to the respondent for the purpose of gumming and super-calendering. The respondent after receiving the stamp base papers had carried out work of gumming on it and had supplied the finished product back to the petitioners. Admittedly, the respondent was required to pay excise duty on the finish product. After the Modvat benefit scheme came into force, the respondent was claiming Modvat credit for the excise duty paid by the petitioners on the stamp base papers and was keeping that credit with it and was not passing it on to the petitioners. It appears that thereafter tender was floated by the petitioners for getting the gumming work done for the year 1995-96. One of the conditions of the tender was that the Modvat Credit availed of by the firm i.e. Respondent is to be passed on to the petitioners. The tender of the respondent was found to be in order, but the respondent objected to the term which required passing of Modvat credit to the petitioners. The respondent told the petitioners in clear terms that unless that term is withdrawn, he is not willing to do the work further. The petitioners did not communicate anything on acceptance or rejection of the term put up by the respondent that the

term about passing of Modvat credit to the petitioners, should be withdrawn. But admittedly, the petitioners dispatched consignment of base papers to the respondent for gumming the work. The respondent carried out the work assuming that its condition has been accepted and now the respondent will be entitled to keep benefit of Modvat as was done by it previously. However, subsequently the petitioners deducted the amount of modvat benefit from the amount payable by the petitioners to the respondent and therefore, the respondents made a claim in the statement of claim. The learned Arbitrator has held that the respondent was not liable to pass on the modvat credit to the petitioners and was entitled to keep it for itself and therefore, the petitioners were not justified in making deduction, and therefore, has directed the petitioners to pay the deducted amount to the respondent. It is this Award which is challenged in the petition.

2. The learned Counsel appearing for the petitioners submits that the petitioners were paying excise duty on the stamp base papers. While paying excise duty on the finished products the respondent was getting benefit of the excise duty that was paid by the petitioners on the raw material i.e. stamp base papers and therefore, as per the modvat scheme the respondent was liable to make over the benefit to the petitioners. According to the learned Counsel, therefore, the finding that is recorded by the learned Arbitrator is illegal. The learned

Counsel further submits that the reliance placed by the learned Arbitrator on the letter dated 15.3.1995 is not proper because that letter was not addressed by the petitioners to the respondent, but it was the internal correspondence between the petitioners and the Excise Department. The learned Counsel further submits that the reliance placed on the letter dated 15.5.1995 is also not proper because from that letter an inference cannot be drawn that the condition of withdrawal of the term in the tender for passing on modvat credit benefit to the petitioners has been accepted by the petitioners.. I have heard the learned Counsel appearing for respondent. I have also gone through the record. In my opinion, the letter dated 15.3.1995 addressed by the petitioners to the Additional Collector, Central Excise, is most instructive letter. In that letter, the petitioners in clear terms stated that the respondent is a Gummer for the Ashoka Pillar Watermark (APWM) Stamp base paper since last about three decades before 1995. It was further stated that till 1993-94 the stamp base paper was exempted from the payment of excise duty. It was also made clear that the petitioners cannot permit the Gummer to buy stamp paper from the open market because it is a security item. Therefore, the only method available is that the petitioners to buy stamp papers from paper mills and supply it to Gummer. It was also stated that during the year 1994-95 the exemption granted to payment of excise duty on the base stamp paper was withdrawn and therefore,

the respondent got itself registered as Small Scale Industrial Unit and started availing of exemption upto Rs.30,00,000/- (Rupees Thirty lakhs only). It is further stated that "with effect from 1.3.1994 M/s.GIC advicsed that they clear this finished gummed stamp base paper after paying the relevant excise duty both on the cost of the base paper as well as its processing charge as will be evident from Certificate dated 10.6.1994 from the Supdt. Central Excise, Umergaon enclosed herewith." Obviously, therefore, M/s.GIC are entitled for Modvat Credit in respect of the excise duty on the base paper. This, they are availing till 30.6.1994 on the basis of the endorsed gate passes by ISP in their favour." The letter dated 15.5.1995 is addressed by the petitioners to the respondent. Alongwith that letter, the petitioners enclosed certificate issued by the Customs Department in favour of the petitioners and it is clear from the letter that those certificates were sent by the petitioners to the respondent so that it can avail of modvat benefit. Thus, it is clear that in the year 1994-95 the respondent was availing of benefit of modvat credit and was not passing it on to the petitioners. When the tender for the year 1995-96 was floated in that tender specific condition was imposed that the modvat credit availed of by the Gummer should be passed on to the petitioners. The respondent objected to that condition by letter dated 5.6.1995 and stated that only if this condition is withdrawn, they are willing to do the work. There was no response from the petitioners to this letter dated

5.6.1995, but the petitioners forwarded base papers to the respondent for carrying out the work of gumming and super-calendering of base papers. From this conduct of the petitioners, the respondent inferred that the condition in the tender for passing on modvat credit to the petitioners, has been waived and deleted. In my opinion, the learned Arbitrator was justified in drawing this conclusion from the conduct of the petitioners. As a result of withdrawal of the condition, the situation that was prevailing during the previous year i.e. 1994-95 continued to prevail, and therefore, during the year 1995-96 also the respondent was not obliged to pass on the modvat benefit. The conclusion which has been reached by the learned Arbitrator is a possible conclusion that can be reached on the basis of material available on record, and therefore, in my opinion, I will not be justified in disturbing this conclusion in the limited jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act,1996. In the result therefore, the petition fails and is dismissed. Petitioners to pay cost of this petition as incurred by the respondent to the respondent.

Pursuant to order dated 14.6.2005 the petitioners have deposited 75% of the awarded amount. As a consequence of dismissal of the petition, the respondent is permitted to withdraw that amount with accruals, if any. The respondent however, shall give credit to the petitioners for the amount withdrawn, while executing the Award. The Prothonotary and Senior Master of this Court, however, shall permit

the withdrawal after expiry of period of Eight weeks.